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**Meredith Corporation and Screen Actors Guild
(SAG)-American Federation of Television and
Radio Artists (AFTRA), Kansas City Local.**
Case 17-CA-077657

June 14, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND GRIFFIN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding.¹ Pursuant to a charge filed on March 29, 2012, the Acting General Counsel issued the complaint on April 11, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 17-RC-068104. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On May 2, 2012, the Acting General Counsel filed a Motion for Summary Judgment. On May 3, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ American Federation of Television and Radio Artists, Kansas City Local (AFTRA Kansas City Local) represented a unit of the Respondent's employees employed in the news department. On November 2, 2011, AFTRA Kansas City Local filed the petition in the underlying representation case proceeding seeking a self-determination election among the news producers to determine whether they wished to be included in the existing unit. About March 30, 2012, the American Federation of Television and Radio Artists (AFTRA) merged with the Screen Actors Guild (SAG) to form SAG-AFTRA. Thereafter, AFTRA Kansas City Local affiliated with SAG-AFTRA to form SAG-AFTRA, Kansas City Local. It is undisputed that SAG-AFTRA, Kansas City Local is the successor of AFTRA Kansas City Local. Thus, on all dates before March 30, "the Union" will refer to AFTRA Kansas City Local, and on all dates on or after March 30, "the Union" will refer to SAG-AFTRA, Kansas City Local. The case heading has been corrected to reflect the identity of the bargaining representative.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis that the Board is not properly constituted as required by Section 3(b) of the Act, and thus did not have the authority to issue the certification and does not have the authority to process the instant case.² In addition, the Respondent reiterates its argument, which was raised and rejected in the underlying representation proceeding, that the Regional Director erred in ordering a self-determination election in the petitioned-for voting group of news producers, as these individuals are supervisors under Section 2(11) of the Act, and therefore ineligible to vote.

Consequently, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and a place of business in Fairway, Kansas (the facility), has been engaged in providing broadcasting, publishing, and marketing services. During the 12-month period ending on March 31, 2012, the Respondent, in conducting its business operations described above, has received gross revenues in excess of \$1 million, and sold and provided goods and services valued in excess of \$50,000 directly to customers located outside the State of Kansas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We find that at all material times and until about March 30, 2012, American Federation of Television and Radio Artists (AFTRA) Kansas City Local was a labor organization within the meaning of Section 2(5) of the

² For the reasons set forth in *Center for Social Change, Inc.*, 358 NLRB No. 24 (2012), we reject this argument. Member Flynn is recused and took no part in the consideration of this case.

³ Therefore, the Respondent's motion to dismiss the complaint in its entirety is denied.

Act, and that since about March 30, 2012, Screen Actors Guild (SAG)-American Federation of Television and Radio Artists (AFTRA), Kansas City Local (SAG-AFTRA, Kansas City Local), has been a labor organization within the meaning of Section 2(5) of the Act.⁴

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following a December 28, 2011 self-determination election, on March 5, 2012, the Board issued a certification of representative certifying that the Union was the exclusive collective-bargaining representative of all news producers employed by the Respondent at its facility and that it is appropriate for the Union to bargain for these employees as part of the group of employees that it represents.

Based on this certification, the following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All announcers, anchors, reporters/newscasters, directors, chief directors, news photographers, multi-media journalists, news editors, news producers, and production assistants. Excluding all office clerical employees, salespersons, guards, professional and supervisory employees as defined in the Act, and all other employees.⁵

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

On March 8, 2012, AFTRA Kansas City Local, by letter, requested that the Respondent bargain with it over terms and conditions of employment that would apply to the news producers. Since about March 19, 2012, the Respondent has failed and refused to bargain with AFTRA Kansas City Local about the news producers, and since about March 30, 2012, the Respondent has

failed to bargain with the SAG-AFTRA, Kansas City Local as the exclusive collective-bargaining representative of the news producers.⁶ We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since March 19 and March 30, 2012, to bargain with the Union as the exclusive collective-bargaining representative of the news producers as part of the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.⁷

ORDER

The National Labor Relations Board orders that the Respondent, Meredith Corporation, Fairway, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with SAG-AFTRA, Kansas City Local as the exclusive collective-bargaining representative of the news producers in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

⁴ As noted in fn.1, above, AFTRA Kansas City Local affiliated with SAG-AFTRA to form SAG-AFTRA, Kansas City Local. At all material times, there has been substantial continuity of representation between AFTRA Kansas City Local and SAG-AFTRA, Kansas City Local. They have common officers, staff representatives, stewards, members, membership, and offices and in the day-to-day administration of collective-bargaining agreements, including the processing of grievances and the services of unit members. Therefore, SAG-AFTRA, Kansas City Local became the successor of AFTRA Kansas City Local and succeeded to its bargaining rights.

⁵ Although the unit description in the complaint includes "technical producers," the Acting General Counsel's motion indicates that the parties have agreed that the technical producers are not included in the previously-existing unit. Therefore, we have corrected the unit description to exclude them.

⁶ Although the complaint alleges that the Respondent refused the Union's request that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the unit, the Union's letter to the Respondent, which is attached to the motion as Exh. 8, specifically states that it is demanding bargaining with respect to the news producers.

⁷ The complaint and the Acting General Counsel's motion request that the Board require the Respondent to bargain in good faith with the Union as the exclusive representative of the unit for the period set forth in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Such a remedy, however, is inappropriate where, as here, the underlying representation proceeding involved a self-determination election. See *White Cap, Inc.*, 323 NLRB 477, 478 fn. 3 (1997), and cases cited there.

(a) On request, recognize and bargain with the Union as the exclusive representative of the news producers as part of the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement: The unit is:

All announcers, anchors, reporters/newscasters, directors, chief directors, news photographers, multi-media journalists, news editors, news producers, and production assistants. Excluding all office clerical employees, salespersons, guards, professional and supervisory employees as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Fairway, Kansas, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.⁹ Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 19, 2012.

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁹ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 14, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with SAG-AFTRA, Kansas City Local as the exclusive collective-bargaining representative of the news producers at our Fairway, Kansas facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for the news producers as part of the following bargaining unit:

All announcers, anchors, reporters/newscasters, directors, chief directors, news photographers, multi-media journalists, news editors, news producers, and production assistants. Excluding all office clerical employees, salespersons, guards, professional and supervisory employees as defined in the Act, and all other employees.

MEREDITH CORPORATION